

DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

TO: Mr. Rook

OFFICE Corporation Tax

FROM: Mr. Doran

DATE February 5, 1970

SUBJECT: Klopman Mills, Inc.

Attached is the hearing file and a proposed decision in the above matter for the fiscal years ended September 30, 1965 and September 30, 1966.

After your review, please send the file to the Tax Commission for consideration.

  
\_\_\_\_\_  
Director

Att: (Folder)

**STATE OF NEW YORK**

**THE STATE TAX COMMISSION**

**- - - - -**  
**In the Matter of the Petition**

**of**

**KLOPMAN MILLS, INC.**

**for refund of franchise tax  
under Article 9-A of the Tax  
Law for the fiscal years ended  
September 30, 1965 and September  
30, 1966.**  
**- - - - -**

Klopman Mills, Inc., having filed petition for refund of franchise tax under Article 9-A of the Tax Law for the fiscal years ended September 30, 1965 and September 30, 1966, and a hearing having been held in connection therewith at the office of the State Tax Commission in New York City on June 16, 1969 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at which hearing Hansel B. Millican, Jr., Vice President, Miriam Williams, Secretary-Counsel, and Humberto L. Quintana, Director of Personnel, appeared personally and testified, together with Robert A. Newman, Esq. and John M. Hadlock, Esq., of Counsel, and the record having been duly examined and considered by the State Tax Commission,

**It is hereby found:**

**(1) That the taxpayer was incorporated in Delaware on April 1, 1947 and has been authorized in New York State since April 3, 1947;**

**(2) That taxpayer filed a franchise report for the fiscal year ended September 30, 1965 computing and paying a tax of \$54,659.50;**

(3) That claims for credit or refund were filed by the taxpayer requesting refund of \$54,639.50 for fiscal year ended September 30, 1965, and \$52,236.09 for fiscal year ended September 30, 1966, the latter amount representing estimated tax paid for that year;

(4) That the claims for credit or refund were denied by the Corporation Tax Bureau and taxpayer was requested to file a franchise report for the fiscal year ended September 30, 1966; that such report was filed showing a tax computation of \$28,175.45 and the taxpayer was notified by the Corporation Tax Bureau that such amount was due;

(5) That taxpayer is a manufacturer of textile fabrics with its executive headquarters located in Rockleigh, New Jersey; it leased an office in New York City at 115 West 40th Street containing about ten to twelve thousand square feet of office and showroom space; 271 persons were permanently employed in the New York office during the fiscal year ended September 30, 1965 and 175 were permanently employed during the fiscal year ended September 30, 1966; such employees included an advertising manager, two persons who handled complaints from customers regarding quality of merchandise delivered, and five sales divisions, namely, shirting, men's wear, retail, women's wear and uniforms, each headed by a division sales manager;

(6) That the advertising manager in the New York office consulted with the division sales managers regarding the initiation of advertising campaigns recommended by the latter in connection with the introduction of new fabrics; he discussed such recommendations with the advertising

director attached to the Rockleigh, New Jersey, office; he assisted the sales divisions in setting up display booths, literature and posters at trade shows and acted as an expeditor with respect to the independent advertising agency located in New York City to see that the advertising campaigns were on time;

(7) That the two employees in the New York office handling complaints had the title of quality control adjusters and handled the complaints of customers located in New York City; they would visit the customer's place of business, examine the fabric and then make a recommendation to the company's office at Rockleigh, New Jersey; after being notified of the decision reached by the Rockleigh office, they would return to the customer's place of business and negotiate the settlement;

(8) That the five sales divisions in the New York office carried on sales promotion activities, such as engaging in trade shows, and solicited and received orders which were forwarded to the Rockleigh, New Jersey, office for credit checking and mailing of an official contract to the customer; all sales orders received by the taxpayer's sales offices located throughout the country, except for those received from department stores, were routed through the New York office for transmittal to Rockleigh;

(9) That during the period April 6, 1966 through September 12, 1966, fifty-five employees of the Rockleigh office, comprising the credit, greige sales, quality control and traffic departments, were transferred to New York because of a fire at the Rockleigh location;

(10) That a field audit examination conducted by the New York office of the Corporation Tax Bureau indicates that the taxpayer maintained, until January 1, 1965, a stock of merchandise inventory in New York from which shipments were made direct to customers; the franchise report filed by the taxpayer for the fiscal year ended September 30, 1965 shows shipments from such New York stock for the period October 1, 1964 through January 1, 1965 aggregating \$420,646.29, consisting of \$94,995.34 shipped to points in New York at Schedule D, item 2(a) and \$325,650.75 shipped to points outside New York at item 2(c);

(11) That section 1.6 c of Ruling of the State Tax Commission reads, in part, as follows:

"e. A foreign corporation, the business of which is wholly interstate commerce, may do business in New York without becoming subject to the tax. But a foreign corporation, the business of which is partly interstate commerce and partly local business, is subject to the franchise tax imposed for the privilege of doing business in New York \* \* \*."

Based upon the foregoing findings and all of the evidence presented, the State Tax Commission hereby

**DECIDES:**

(A) That the activities indicated at (6), (7), (9) and (10) above constitute local activities which subject the corporation to franchise tax pursuant to section 1.6 c of Ruling of the State Tax Commission;

(B) That taxpayer's petition for refund in the amount of \$54,659.50 for the fiscal year ended September 30, 1965 is denied, and the tax of \$54,659.50 for that year as indicated at (2) above is affirmed;

(C) That taxpayer's petition for refund in the amount of \$52,236.09 for the fiscal year ended September 30, 1966 is denied to the extent of \$28,175.45, and the tax of \$28,175.45 as indicated at (4) above is affirmed;

(D) That the aforesaid taxes do not include any taxes or other charges which are not legally due.


Dated: Albany, New York

this 9th day of March, 1970.

THE STATE TAX COMMISSION

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER